

APPEAL NO. 041233
FILED JUNE 29, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on May 10, 2004. The hearing officer determined that: (1) the appellant (claimant) did not sustain a compensable injury on _____; (2) that the respondent (carrier) is not relieved from liability under Section 409.004 even though the claimant failed to timely file a claim for compensation with the Texas Workers' Compensation Commission (Commission) within one year of the injury as required by Section 409.003; (3) that the carrier's defense on compensability is limited to the course and scope defense listed on the first Payment of Compensation or Notice of Refused/Disputed Claim (TWCC-21) that was filed with the Commission on April 11, 2003; and that the carrier has not waived the right to contest compensability of the _____, claimed injury because it disputed the claim within seven days in accordance with Section 409.021 and 409.022. The claimant appealed the hearing officer's injury, timely filing, and carrier waiver determinations. The carrier responded, urging affirmance. The hearing officer's determination regarding the carrier's limited course and scope defense has not been appealed and has become final pursuant to Section 410.169.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant did not sustain a compensable injury on _____. The claimant had the burden of proof on the injury issue and it presented a question of fact for the hearing officer to resolve. Johnson v. Employers Reinsurance Corp., 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). The hearing officer is the sole judge of the relevance and materiality of the evidence and of its weight and credibility. Section 410.165(a). The hearing officer resolves the conflicts and inconsistencies in the evidence and decides what facts the evidence has established. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). In this instance, the hearing officer simply did not believe the claimant's testimony and the evidence tending to demonstrate that he sustained damage or harm to the physical structure of his body as claimed. When reviewing a hearing officer's decision for factual sufficiency of the evidence we should reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986). The claimant makes the same factual arguments on appeal that he made at the hearing. Applying the standard of review outlined above, we find no reversible error.

The hearing officer did not err in determining that the claimant failed to timely file a claim for compensation with the Commission within one year of the injury as required by Section 409.003. The claimant had the burden to prove that he filed his claim of

injury within one year of the date of his injury pursuant to Section 409.003, or had good cause for not timely filing. The hearing officer was persuaded by the evidence that the claimant filed a claim for compensation on April 7, 2003, more than one year after the date of the claimed injury of _____. Despite the fact that the claimant did not timely file a claim for compensation within one year, the carrier is not relieved of liability because the carrier did not timely raise this defense. Nothing in our review of the evidence indicates that the hearing officer's determination on this issue is so against the great weight of the evidence as to be clearly wrong or manifestly unjust. Cain, supra.

The hearing officer did not err in determining that the carrier did not waive the right to contest compensability of the _____, claimed injury because it disputed the claim within seven days in accordance with Sections 409.021 and 409.022. The evidence reflects that the carrier first received written notice of the claimed injury of _____, on April 8, 2003, and filed its dispute on April 11, 2003. The hearing officer's decision is supported by sufficient evidence and is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain, supra.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **SECURITY NATIONAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**DOROTHY LANGLEY
10000 NORTH CENTRAL EXPRESSWAY
DALLAS, TEXAS 75230.**

Veronica L. Ruberto
Appeals Judge

CONCUR:

Daniel R. Barry
Appeals Judge

Gary L. Kilgore
Appeals Judge